

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 2: Administration of Child Welfare	Effective Date: September 1, 2008
	Section 5: Administrative Appeal Hearings	Version: 2

POLICY

The Indiana Department of Child Services (DCS) recognizes the right of the alleged perpetrator to request an Administrative Appeal Hearing if substantiated allegations of Child Abuse and/or Neglect (CA/N) are upheld in the DCS Administrative Review. The process outlined herein will apply to all substantiated CA/N determinations made on or after October 15, 2006.

If the substantiated assessment is against a minor perpetrator, the request for an Administrative Appeal Hearing must be made by the child's parent, guardian, custodian, attorney, Guardian ad Litem, or Court Appointed Special Advocate (CASA).

DCS requires that all requests be made using the [Request for an Administrative Appeal Hearing](#) and that the request be received by the DCS Central Office within thirty-three (33) calendar days from the date listed on the [Notice of Administrative Review Decision](#).

Note: If the request for an Administrative Review is received on a day that the DCS local Office is closed, the next business day is considered the receipt date.

If the substantiated assessment is against a DCS Employee, a child care worker, or a resource parent, as defined in DCS policies [2.4 Child Care Worker Assessment Review Process](#) and [2.5 Assessment and Review of DCS Staff Alleged Perpetrators](#), the Administrative Appeal Hearing will be held within **twenty (20) calendar days** of the date the request is received by Central Office, unless the alleged perpetrator/appellant requests an extension of time for hearing preparation or other good cause as outlined in 470 IAC 1-4-3(i).

Note: If the alleged perpetrator is a DCS employee, a child care worker, or a resource parent DCS cannot ask for a continuance. For other alleged perpetrators, DCS can request a continuance but must follow the same requirements as the alleged perpetrator.

DCS will hold all other hearings within **ninety (90) calendar days** of the date the request is received by Central Office. The DCS Appeal Unit will notify the appellant and the DCS local Office in writing of the hearing date at least **ten (10) business days** in advance.

DCS acknowledges that the appellant has the right to bring witnesses and/or legal counsel to the hearing and to present evidence.

DCS will not conduct an Administrative Appeal Hearing and will order a Stay of the Administrative Appeal if:

1. A CHINS petition has been filed based on the facts of the substantiated determination, until the court has ruled on the petition:
 - a. any request received for an Administrative Appeal will be stayed due to a pending CHINS matter; and
 - b. during the stay, the substantiation will remain on the Child Protection Index (CPI);
 - c. the Notification of the Stay will be sent by the local DCS office until the case is set for hearings by the hearings and appeals unit.

Note: In the event the CHINS petition results in adjudication of CA/N by the person who requested the review, the request for Administrative Appeal will be dismissed.

2. Criminal charges or Juvenile Delinquency (JD/JS) have been filed on the same facts and circumstances on which the report of CA/N was substantiated, until the court has ruled on the charges:
 - a. any request received for an Administrative Appeal will be stayed due to a pending criminal or JD matter; and
 - b. during the stay, the substantiation will remain on the CPI; and
 - c. the Notification of the Stay will be sent by the local DCS office until the case is set for hearings by the hearings and appeals unit.

Note: In the event that the alleged perpetrator is an adjudicated delinquent based on the substantiated CA/N, the Administrative Appeal will be dismissed as to those allegations.

3. An Informal Adjustment (IA) has been filed:
 - a. any request received for an Administrative Appeal will be stayed due to a pending IA; and
 - b. during the stay, the substantiation will remain on the CPI.

Note: DCS may reactivate the appeal after completion of the IA if it was requested timely by the alleged perpetrator.

DCS will reactivate a alleged perpetrator's right to an Administrative Appeal in accordance with the Stay Order when:

1. The alleged perpetrator notifies the DCS local office in a timely manner, of their desire to continue with the Administrative Appeal; and
2. The alleged perpetrator provides an official court document reflecting that the issues relating to the same facts and circumstances have been resolved; and
3. The alleged perpetrator notifies the DCS local office within **thirty (30) calendar days** of the court's action:
 - a. The DCS local office will determine whether to set the Appeal or dismiss it based on the official court document provided by the alleged perpetrator and submit the documents to the Appeal Unit with a recommendation
 - b. The Appeal Unit will notify the alleged perpetrator of dismissal or the Administrative Appeal Hearing.

The DCS Administrative Appeal Hearing will be conducted and decisions issued in accordance with the procedures outlined in [470 IAC 1-4](#), except for 470 IAC 1-4-6 and 1-4-8.

The presiding Administrative Law Judge (ALJ) will issue a written decision:

1. Within fifteen (15) calendar days after completion of the hearing for child care workers, DCS employees, or resource parents; or,
2. Within thirty (30) calendar days after completion of the hearing for all other hearings.

The ALJ's decision will be the **final** decision of DCS regarding the classification of the CPS assessment and report, subject to the right to judicial review as provided in [470 IAC 1-4-7](#).

Note: This policy does not apply to Administrative Appeals of license denials or revocations that are currently heard and decided by the Indiana Family and Social Service Administration's (FSSA's) Office of Hearings and Appeals.

Code References

1. [IC 31-33-26](#)
2. [470 IAC 1-4-1 Administrative Appeals](#)

3. [IC 4-21.5-3-2](#)

PROCEDURE

The alleged perpetrator will:

Request an Administrative Appeal Hearing by submitting a [Request for Administrative Appeal Hearing](#) to the DCS local Office which conducted the assessment, within **thirty-three (33) calendar days** of the date on the [Notice of Administrative Review Decision and Right to Administrative Appeal](#).

Note: If the request is received on a Saturday, Sunday, or legal holiday under state statute the next business day is to be considered the receipt date. If mailed, **three (3) days** must be added to the mail calculation and the date mailed is not included. (IC 4-21.5-3-2)

The DCS local office that receives the request will:

1. Document receipt of the request in the assessment file;
2. Complete an [Appeal Request Coversheet](#);
3. Fax the following information to the DCS Hearings Coordinator within one (1) business day of receipt:
 - a. The Appeal Request Coversheet; and
 - b. The Appeal Request submitted by the alleged perpetrator; and
 - c. Any supporting documentation submitted by the alleged perpetrator; and
 - d. A copy of the approved Assessment of Child Abuse or Neglect (SF 113/CW0311); and
 - e. A copy of any other applicable forms.

Note: The DCS Local Office Director will ensure that if the request for an Administrative Appeal Hearing is not received within **thirty (30) calendar days** of the date on the [Notice of Administrative Review Decision and Right to Administrative Appeal](#), the DCS local office will **dismiss** the request prior to referral to the Appeal Unit.

When a request for a hearing is received, the DCS Hearings Coordinator will:

1. Record the case in the DCS hearing tracking system,
2. Assign the case to a DCS Administrative Law Judge (ALJ);
3. Schedule the hearing; and
4. Notify the alleged perpetrator (appellant), the appellant's representative (if any), the ALJ, the DCS Local Office Director, DCS local Office Attorney, and Regional Manager of the date, time and specific location of the hearing.

At the hearing, the DCS local office representative will:

1. Review assessment documentation prior to the hearing; and
2. Bring supporting documentation to be entered as evidence.

The ALJ will:

1. Conduct a hearing in accordance with the procedures specified in 470 IAC 1-4-1 through 1-4-5.
2. Issue a written decision:
 - a. Within fifteen (15) calendar days after completion of the hearing for child care workers, resource parents, and DCS employee's; or
 - b. Within thirty (30) calendar days after completion of the hearing for all other hearings.

After the hearing, the DCS Hearings Coordinator will:

Ensure that all of the following persons are notified of the decision:

- a. The appellant (alleged perpetrator);
- b. The appellant's (alleged perpetrator's) representative or legal counsel, if applicable;
- c. The DCS Local Office Director of the county who assessed the case;
- d. The Regional Manager;
- e. DCS Local Office Attorney.

The Regional Manager and/or DCS Local Office Director will:

Notify the Supervisor and instruct him or her to unapprove any allegations that may have been overturned during the Administrative Appeal Hearing.

The Supervisor will:

Unapprove any allegations that may have been overturned during the Administrative Appeal Hearing.

PRACTICE GUIDANCE

Preparation for a Scheduled Administrative Appeal Hearing

The DCS local office should prepare for an Administrative Appeal Hearing in the same manner as if it were preparing for a CHINS Juvenile Court Fact Finding Hearing. Thorough records and documentation should be compiled and presented at the Administrative Appeal Hearing as County DCS exhibits. **It is critical that a witness with first hand knowledge can testify at the hearing.**

Note: The submission of an Assessment of Child Abuse or Neglect (SF 113/CW0311) alone as a sole exhibit will make it difficult for the DCS substantiation to be upheld.

Presenting the DCS Case at the Hearing

At the Administrative Appeal Hearing, the case may be presented by a Family Case Manager (FCM), Supervisor, and/or DCS Local Office Attorney. The DCS Local Office Director may decide who is best able to represent the Agency. DCS has the right to bring witnesses to the hearing and to present corroborating evidence.

Provide copies of interviews or video recordings at the Hearing

The usage of audio or video recordings, including forensic interviews, can be extremely helpful in presenting a case. If you submit such an exhibit for consideration, it must be in a format that can be played at the hearing (laptop computer, recorder, etc.).

Note: Copies of the offered exhibit must be provided to the ALJ and to the Appellant.

Final Decision of DCS

The ALJ's decision will be the final decision of DCS regarding the classification of the CPS assessment and report, subject to judicial review as provided in 470 IAC 1-4-7.

FORMS AND TOOLS

1. [Request for an Administrative Appeal Hearing](#)
2. [Appeal Request Coversheet](#)
3. Assessment of Child Abuse or Neglect (SF 113/CW0311)

RELATED INFORMATION

Location of Hearings

All hearings for child care workers, resource parents, and DCS employees will be held in Indianapolis, unless the alleged perpetrator/appellant both (a) requests that the hearing be held in another location and (b) consents to extension of the hearing time limits.

All other hearings will be held in a pre-determined central location near the county of residence of the appellant. The locations are as follows:

Appellant resides in:	Hearing will be held in:
Region 1, Region 2 (LaPorte, Porter, Jasper, Newton)	Gary
Region 2 (Pulaski, Starke), 3,4, 6 (except Howard County)	South Bend or Rochester
Regions 5, 6 (Howard County), 7, 8, 9, 10, 11, 12, 14 (Johnson County, Shelby County)	Indianapolis
Regions 13, 14 (Bartholomew County, Jackson County, Jennings County), 15, 18 (Clark County, Floyd County, Scott County)	Columbus
Regions 16, 17, 18 (Harrison County, Washington County)	Jasper